

184-188 Claremont Inv. LLC v Knowles

2015 NY Slip Op 32489(U)

December 31, 2015

Supreme Court, New York County

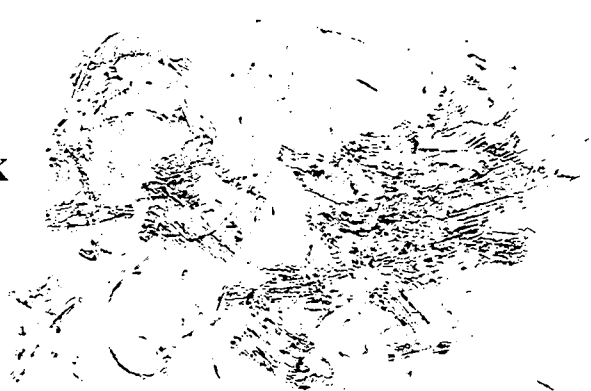
Docket Number: 160129/2014

Judge: Donna M. Mills

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58**



184-188 CLAREMONT INVESTORS LLC,

Plaintiff,

-against-

PAMELA KNOWLES,

Defendant.

INDEX NUMBER 160129/2014
Motion Sequence 004, 005, 006
DECISION & ORDER

DONNA MILLS, J.:

Motion sequences bearing the numbers 004, 005 and 006 are hereby consolidated for disposition. In this dispute over subletting an apartment, plaintiff 184-188 Claremont Investors LLC (Landlord) moves to strike defendant Pamela Knowles's (Tenant) answer for failure to provide necessary discovery, or, in the alternative, to compel her to provide responses to outstanding discovery demands (Mot. Seq. 004). Tenant cross-moves to quash subpoenas and for issuance of a protective order denying discovery from certain nonparties. Landlord also moves for a finding of contempt against nonparty Pisticci Restaurant Corp. (Pisticci) (Mot. Seq. 005). Additionally, Landlord moves to amend the language of the court's order dated December 3, 2014, dealing with the use and occupancy of the subject apartment (Mot. Seq. 006).

FACTUAL BACKGROUND

Landlord owns the property at 184 Claremont Avenue, New York County, where Tenant occupies apartment 2-S (the Apartment), pursuant to a written lease. Neither party produces a copy of the lease, but there is no dispute about its existence or the relevant terms, including its prohibition on subletting without Landlord's permission.

Landlord filed a complaint, on October 15, 2014, requesting an injunction against Tenant

subletting the Apartment, attorneys' fees for bringing the action, and payment of rent arrears.

On December 3, 2104, the court denied Landlord's motion for a preliminary injunction, granted Landlord's motion for pendente lite use and occupancy in the amount of \$3,300 monthly, and denied Tenant's cross motion to dismiss the action.

DISCUSSION

Mot. Seq. 004

Landlord claims that Tenant has failed to provide timely responses to its discovery demands, dated December 22, 2014. *See* D'Angelo affirmation, Mot. Seq. 004, exhibit 3. Landlord sent Tenant a good faith letter on February 2, 2015, reminding her that her responses to its discovery demands were overdue. *Id.*, exhibit 4. This second effort evoked no response from Tenant. Now, Landlord moves, pursuant to CPLR 3126 (3), to strike Tenant's answer, or, in the alternative, to compel Tenant's compliance with the outstanding discovery demands.

Tenant opposes this motion, and cross-moves for a protective order against Landlord's document requests, and to quash subpoenas issued to nonparties. Most of the document requests deal with Tenant's financial records – tax returns, bank statements, credit card statements, bills and receipts for household expenses, and records of nonemployment income. Landlord seeks this material to support its allegation that “Knowles has been renting the rooms of her apartment to unapproved occupants at substantial profits.” Complaint, ¶ 10. An accurate picture of Tenant's finances during the period at issue is an important factor in determining the outcome of this action. Landlord's demands for her financial records are more than reasonable in the action's discovery phase, where wide latitude is allowed. CPLR 3101 (a). Admissibility of the information thus acquired is reserved for a later phase of the action. *Hyde v County of Rensselaer*, 51 NY2d 927, 929 (1980) (“A Trial Judge necessarily is vested with broad discretion

to determine the materiality and relevance of proposed evidence . . .”). The only exception is Landlord’s demands for federal and state income tax returns. “Courts do not favor disclosure of income tax returns without some showing that the particular information in tax returns has some specific application to the case or that other sources of information are likely to be inaccessible or unproductive.” *Active Fire Sprinkler Corp. v American Home Assur. Co.*, 203 AD2d 218 (2d Dept 1994). Landlord has not made the requisite showing, so Tenant’s federal and state income tax returns are excluded from this order.

Landlord’s motion (Mot. Seq. 004) is granted to the extent of requiring Tenant to respond completely and thoroughly to Landlord’s December 22, 2014 demands, with the exception of her federal and state income tax returns, within 14 days of receipt of this order with notice of entry. If Tenant objects to the production of any item demanded, Tenant must offer current, pertinent case law supporting the objection. Failure to comply with this order will result in appropriate sanctions. Tenant’s cross motion for a protective order against Landlord’s document requests is denied.

Mot. Seq. 005

Landlord issued a subpoena duces tecum and ad testificandum to Pisticci, Tenant’s employer, on or about January 5, 2015. D’Angelo affirmation, Mot. Seq. 005, exhibit 3. Pisticci has failed to comply with the subpoena, which is intended to elicit information about Tenant’s income, a reasonable subject to explore in this action.

“It is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding. It is equally well settled that a motion to quash a subpoena duces tecum should be granted only where the materials sought are utterly irrelevant to any proper inquiry.”

Velez v Hunts Point Multi-Serv. Ctr., Inc., 29 AD3d 104, 112 (1st Dept 2006) (citation omitted).

Tenant's cross motion to quash the subpoena does not meet this standard, and the cross motion is denied. Landlord moves to have Pisticci held in contempt and punished for its failure to comply with the subpoena. However, New York law does not permit civil contempt proceedings to be instituted by service of a notice of motion by ordinary mail upon an alleged contemnor who is not a party to the underlying action in which the contempt is claimed to have been committed. *Long Is. Trust Co. v Rosenberg*, 82 AD2d 591 (2d Dept 1981).

“Where an alleged contemnor is not a party to the underlying action in which the contempt is alleged to have been committed, jurisdiction over the person of the alleged contemnor will have to be acquired. In such case, the application to punish for contempt must take the form of a special proceeding, which is independent of the underlying action.”

Infinity Tech. Staffing, Inc. v Medlink VPN, Inc., 39 Misc 3d 139 (A), *1, 2013 NY Slip Op 50708 (U) (App Term, 2d Dept 2013). Landlord's motion (Mot. Seq. 005) to hold Pisticci in contempt and have it punished for its failure to comply with a subpoena is, therefore, denied.

Mot. Seq. 006

On December 3, 2014, the court granted Landlord's motion for pendente lite use and occupancy for the Apartment in the amount of \$3,300 monthly, commencing January 2015. On May 15, 2015, the New York State Division of Housing and Community Renewal (DHCR) issued an order that the \$3,300 monthly rent on the Apartment charged and collected from April 8, 2009 constituted an overcharge; Landlord was directed to roll back the rent, and Tenant was entitled to a credit or refund. D'Angelo affirmation, Mot. Seq. 006, exhibit 2. DHCR's order also calculated the collectible rent for the apartment, as of January 1, 2015, as \$2,610 monthly.

Landlord moves to modify the court's December 3, 2014 order to comport with DHCR's order. However, Landlord asks that the court order a pendente lite rent of \$2,730 monthly, not

the amount of collectible rent found by DHCR. Additionally, Landlord asks the court to direct Tenant to pay \$35,540.67 "arrears." Neither the word arrears nor the amount of \$35,540.67 appear in DHCR's order.

Landlord's motion (Mot. Seq. 006) to amend the court's December 3, 2014 order is granted only to the extent of amending the court's December 3, 2014 order to comport with DHCR's order, using DHCR's stated calculations.

Accordingly, it is

ORDERED that the motion (Mot. Seq. 004) by plaintiff 184-188 Claremont Investors LLC is granted to the extent of requiring defendant Pamela Knowles to respond completely and thoroughly to plaintiff's December 22, 2014 demands, with the exception of her federal and state income tax returns, within 14 days of receipt of this order with notice of entry within 14 days of receipt of a copy of this order with notice of entry; and it is further

ORDERED that defendant Pamela Knowles's cross motion to quash subpoenas and for issuance of a protective order denying discovery from certain nonparties is denied; and it is further

ORDERED that the motion (Mot. Seq. 005) by plaintiff 184-188 Claremont Investors LLC to punish Pisticci Restaurant Corp. for failure to comply with plaintiff's subpoena is denied; and it is further


ORDERED that the motion (Mot. Seq. 006) by plaintiff 184-188 Claremont Investors LLC to amend the court's order of December 3, 2104 is granted, and the order shall read, in relevant part:

"ORDERED that the plaintiff's motion for pendente lite use and occupancy is granted and the defendant is directed to pay \$2,610 to plaintiff commencing in

January 2015 when it becomes due, and shall continue to pay use and occupancy per month at said rate on each rental due date until resolution of the underlying action . . .”

DATED: ~~November~~ ^{December} 31, 2015

ENTER:



J.S.C.
DONNA M. MILLS, J.S.C.